

# **Massachusetts vs. EPA—Timeline, Legal Questions, and Case Details**

## **A Legacy of Broken Promises and Willful Inaction**

On **April 2, 2007**, in a 5-4 vote, the U.S. Supreme Court sided with the Sierra Club, 12 states, 3 cities, and other petitioners by agreeing that carbon dioxide and other global warming pollutants can be regulated under the Clean Air Act. Additionally, in a separate 5-4 ruling, the Justices wrote that the Environmental Protection Agency (EPA) cannot refuse to regulate these pollutants for political reasons or in favor of extra-statutory policy preferences.

Yet despite that ruling, both EPA and President Bush have created a legacy of broken promises and willful inaction when it comes to fulfilling that judgment:

**May 14, 2007** – Referencing the April 2007 Supreme Court decision, President Bush signs executive order directing all involved government agencies to work on the reducing greenhouse gas emissions in vehicles. EPA Administrator Stephen L. Johnson then makes a statement promising “a proposed rule on regulating greenhouse gases” by fall 2007.

**September and November 2007** – Johnson makes public statements saying the rule will be done by end of 2007.

**December 2007** – No action from EPA, other than claiming—contrary to similar arguments previously rejected by the Court—that the increase in fuel economy standards occasioned by the Energy Independence and Security Act of 2007 (signed into law December 19, 2007) was an appropriate substitute for federal regulations concerning global warming emissions from vehicles. EPA also used this argument to deny California the Clean Air Act “waiver” that will allow it and at least 17 other states to proceed with their own landmark global warming emissions standards for vehicles.

**March 27, 2008** – Shirking his agency’s responsibility, EPA Administrator Stephen L. Johnson tells Congress that he will open a public comment period about whether CO<sub>2</sub> is a risk before responding to the Supreme Court’s order.

Information was then released in the *LA Times* and *Inside EPA* stating that Johnson’s public comment decision came after intense lobbying from conservative think tank The Heritage Foundation, despite the ruling from the Supreme Court stating that the agency cannot refuse to make a ruling based on political reasons or extra-statutory policy preferences. From the *LA Times*: “Johnson’s action came after Edwin Meese III and fellow attorneys at the Heritage Foundation, a Washington-based think tank, spent months sending detailed legal analyses and memos to ‘everyone we could think of’ at the White House and in Congress, said Michael Franc, the foundation’s vice president of government relations.”

## **Full timeline of the case**

**1998-** EPA General Counsel Jonathan Cannon issues legal opinion agreeing that EPA has the authority under the Clean Air Act to regulate global warming pollution.

**1999** - The Center for Technology Assessment (CTA) led a coalition of environmental groups in petitioning EPA to set emission standards for CO<sub>2</sub> and other vehicle GHG emissions.

**2002-** After three years of inaction from the EPA, Sierra Club and others bring suit against the agency for failing to act on its authority. EPA then responded by reversing its previous position, asserting it had no authority to regulate greenhouse gases and, even if it did, it would not do so.

**2005-** In a muddled 2-1 ruling, the U.S. Court of Appeals for the District of Columbia Circuit upheld EPA’s decision. The panel splintered three ways, producing no majority opinion.

**June 2006-** On June 26, the Supreme Court agreed to decide whether the Clean Air Act authorizes the EPA to regulate the GHGs that cause global warming.

**August 2006-** Petitioners file initial written briefs in the case.

**November 2007** - The Supreme Court hears oral arguments in *Massachusetts v. EPA*.

**April 2, 2007-** 5-4 ruling in favor of the petitioners handed down by the Court.

**January 23, 2008** – The Sierra Club and its fellow petitioners warn of their intent to bring an action to challenge EPA’s unreasonable delay in issuing an endangerment determination. Petitioners demand that EPA outline its plans by February 27, 2008.

**February 28, 2008** – EPA fails to respond to petitioners with specific plans or a timeline for issuing an endangerment determination or draft regulations for global warming emissions from vehicles.

## **Relevant Provisions of the Clean Air Act**

Section 202(a)(1):

The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment, cause, or contribute to, **air pollution which may reasonably be anticipated to endanger public health or welfare.**

Section 302(g):

The term “air pollutant” means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter which is emitted into or otherwise enters the ambient air.

Section 302(h):

All language referring to effects on welfare includes, but is not limited to, effects on **soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being**, whether caused by transformation, conversion, or combination with other pollutants.

## **Questions before the Supreme Court in Mass. v. EPA**

1. Whether the plaintiffs had standing to bring the case.
2. Whether the EPA Administrator has authority to regulate carbon dioxide and other air pollutants associated with climate change under section 202(a)(1) of the Clean Air Act.
3. Whether the EPA Administrator may decline to issue emission standards for motor vehicles based on policy considerations not enumerated in section 202(a)(1).

## **Options Given to EPA by the Supreme Court in the April 2, 2007 ruling:**

1. Make a positive endangerment determination and commence the standard setting process,
2. Make a negative endangerment determination by “determine[ing] that greenhouse gases do not contribute to climate change,” or
3. Provide “a reasoned justification for declining to form a scientific judgment.”

## **Petitioners in the case:**

Massachusetts, California, Connecticut, Illinois, Maine, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington, the District of Columbia, American Samoa Government, New York City, the Mayor and City Council of Baltimore, Center for Biological Diversity, Center for Food Safety, Conservation Law Foundation, Environmental Advocates, Environmental Defense, Friends of the Earth, Greenpeace, International Center for Technology Assessment, National Environmental Trust, Natural Resources Defense Council, Sierra Club, Union of Concerned Scientists, and U.S. Public Interest Research Group.

Filing as “*amici*” for the petitioners: Fourteen prominent climate scientists, two electric power companies (Entergy and Calpine), four former EPA administrators, former Secretary of State Madeleine Albright, six states (Arizona, Delaware, Iowa, Maryland, Minnesota, and Wisconsin), the U.S. Conference of Mayors, the National Council of Churches, Aspen Ski Company, North Coast Rivers Alliance, National Wildlife Federation, Alaska Natives, and ocean and coastal groups.

## **Arguments Advanced by Petitioners in Mandamus filing on April 2, 2008**

1. The U.S. Circuit Court of Appeals for the District of Columbia Circuit has jurisdiction to enforce the High Court’s mandate.
2. EPA has unreasonably delayed acting in accordance with the Supreme Court’s ruling and [the DC Circuit’s] mandate.
  - a) There is no legitimate reason to justify EPA’s failure to issue an endangerment determination—a finding it has already prepared, specifically:
    - The Dept. of Transportation’s fuel economy authority and the enactment of the Energy Independence and Security of 2007 do not excuse EPA’s inaction
    - EPA may not delay its endangerment determination to in order to develop an “overall approach” to global warming emission
  - b) Human health and welfare are at stake
  - c) Ordering issuance of the endangerment determination will not hamper agency activities of higher or competing priority
  - d) Delay is causing significant harm to the public
  - e) Although petitioners need not show agency impropriety to make out a case for mandamus, there is ample evidence that EPA has acted, and continues to act, improperly.
3. Petitioners have no other adequate remedy
4. EPA should be ordered to issue its endangerment determination within 60 days.